PRIVY COUNCIL.

RAJA KEESARA VENKATAPPAYYA, SINCE DECEASED AND OTHERS (PLAINTIFFS), APPELLANTS,

1928, November 23.

v.

RAJA NAYANI VENKATA RANGA ROW (DEFENDANT), RESPONDENT.*

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Registration—Authority to adopt—Presentation for registration—Representative of adoptive son—Guardian—Natural father—Indian Registration Act (III of 1877), ss. 32, 40 and 41.

The provision in section 40 of the Indian Registration Act, 1877, that an authority to adopt may be presented for registration after the donor's death, by the donee or the adoptive son, does not exclude the authority, under section 32, of the representative of the adoptive son to present the document. The definition of the representative of a minor in section 3 does not preclude a person who is not his appointed guardian from being his representative.

An authority to adopt was presented for registration by the adoptive son's natural father, who was then his nearest male agnate, treating the son as having passed into the adoptive family. Registration was effected, the registering officer having satisfied himself, as required by section 41, that the person presenting was entitled to do so according to section 40, and it not having been objected that he was not so entitled.

Held, that the document was duly registered, since the natural father, as the adoptive son's nearest male agnate, was the proper person to act as his natural guardian in the absence of any guardian judicially appointed; further, that any doubt upon the facts was removed by the certificate of the registering officer.

Quaere whether in the case of an adoptive son of tender years residing with his natural father, the natural father is not,

* *Present*:—LORD PHILLIMORE, LORD ATKIN and SIR LANCELOT SANDERSON.

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in the absence of a guardian, his representative, even when he is not his nearest male agnate in Hindu law.

CONSOLIDATED APPEALS (Nos. 12 and 13 of 1925) from two decrees of the High Court (May 1, 1919) affirming two decrees of the District Court of Kistna at Masulipatam.

The consolidated appeals arose out of two suits which related to the right of succession to the Zamindari of Munagala in the Kistna District. Various questions of fact and of law arose in the suits, but the only question material to the present report was whether an authority to adopt, which had been exercised in favour of the respondent to both the appeals, and had been presented for registration under the Indian Registration Act, 1877, by the respondent's natural father, had been duly presented.

The facts giving rise to the litigation, and the material sections of the above Act, appear from the judgment of the Judicial Committee.

The judgment of the High Court (WALLIS, C.J., and SADASIVA AYYAR, J.) is reported at I.L.R., 43 Mad., 288.

Dunne, K.C., and *Parikh* for the appellants.—The authority to adopt was not validly presented for registration under the Registration Act, 1877. Sections 40 and 41 contain special provisions as to the presentation of a will or authority to adopt, and these provisions exclude those in section 32 which enable the presentation to be made by the representative of a person claiming under the document. Further, section 3 of the Act indicates that the "representative" of a minor is his guardian. The respondent's natural father was not his guardian, and was not a person entitled to present the document: *Amba* v. *Shrinivasa Kamathi*(1).

Upjohn, K.C., DeGruyther, K.C., Narasimham and *Subba Row* for the respondent.—Sections 40 and 41 do not exclude

(1) (1921) 26 C.W.N., 369 (P.C.).

the power given to a representative to present by section 32. Sections 40 and 41 were necessary supplemental provisions to provide for documents taking effect at a date later than their execution. If section 32 were excluded, a testator could not present his will by an agent under a power-of-attorney. The words "and any other person entitled to present it" in section 41 clearly include persons entitled under section 32. The respondent's natural father was his natural guardian. Giving effect to the Hindu law of adoption, he was after the adoption this respondent's nearst agnate. Section 3 provides merely that a minor's representative "includes" his guardian. The natural father was the proper person to take all steps necessary to enforce the respondent's rights of succession: *Nirvanaya* v. *Nirvanaya*(1), *Watson & Company* v. *Sham Lal Mitter*(2), [Reference was made also to the Guardian and Wards Act, 1890, section 4(2)].

Dunne, K.C., replied.

The JUDGMENT of their Lordships was delivered by

LORD PHILLIMORE.

LORD PHILLIMORE.—These are two consolidated appeals in two suits both brought so long ago as the year 1895, being claims to the Zamindari of Munagala in the Kistna District. They arose in the following circumstances:—

Kodanda Ramayya, who was Zamindar, died in the year 1854. He left no son; but his mother, his widow, and a daughter by her named Latchamma survived him. She married a subject of the Nizam of Hyderabad, who died in 1875. Her husband was said to have given his wife an authority to adopt a son, and it was asserted on behalf of the present respondent, Nayam Venkata, that he had been so adopted. The Court of Wards took possession of the estate on behalf of the women, and it was enjoyed by them, not without question, until the death of Latchamma, in March, 1892.

(1) (1885) I.L.R., 9 Bom., 365.
(2) (1887) I.L.R., 15 Calc., 8; L.R., 14 I.A., 178.

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Thereupon disputes arose, and various members of the Keesara family, who were agnates of the last male Zamindar, claimed that the estate was an ordinary Hindu estate owned by a joint Hindu family, further saying that the present respondent had no title as an adopted son, there neither having been any authority to adopt nor any adoption in fact. The defence set up a custom of impartibility and descent by lineal primogeniture and the title by adoption, and further pleaded the Limitation Act.

The District Judge in a very careful judgment, found that the estate was an impartible one, and that the plaintiffs' claim was ill-founded, resting largely upon forged documents; and he dismissed this suit, which though first in time is second under the order consolidating these appeals. The District Judge further held that the defence of the Limitation Act, if it was required, would have been a sufficient answer to the suit.

On appeal, the High Court affirmed this judgment. Both Judges held in express terms that the case of the plaintiffs had not been established. The CHIEF JUSTICE further held that the defence of the Limitation Act was good. The other Judge did not find it necessary to express an opinion on the point.

When the matter came before their Lordships, counsel for the appellants in the first suit found himself unable to resist the conclusion that the decisions in India had turned upon matters of fact upon which there were concurrent findings in both Courts, and he was unable to take this case out of the ordinary rule of this Board, refusing to interfere except in very special cases with decisions turning on concurrent findings of fact. It was clear, therefore, that this appeal must fail.

In the second suit, first in the consolidation order, one of the Keesara agnates purported to accept the

position that the estate was by custom an impartible estate. He did not, however, accept the further proposition that it descended by lineal primogeniture. He claimed that he was the nearest reversionary heir excluding the respondent, whose adoption he contested. The defence denied the plaintiff's title, set up the adoption, and pleaded the Limitation Act. When the case came before the District Judge, he decided in favour of the respondent on all grounds. He held that the estate descended by lineal primogeniture, and that if this was the case, the plaintiff was not the next heir, even if there were no adoption. He further held in favour of the adoption and the defence of the Limitation Act.

When the case came before the High Court, the decision was affirmed, and the appeal was dismissed. The learned Judges of the High Court do not appear to have considered the question whether the plaintiff was, if the adopted son were excluded, the nearest reversionary heir. But the conclusions at which they had arrived in the former suit were sufficient for dismissing this suit also; and accordingly both appeals were dismissed on the 1st May, 1919.

Here, their Lordships must pause to comment upon the lamentable delay which has taken place. These suits, as already observed, were both started in the year 1895 in respect of claims which, if well-founded, would have accrued in 1892. It is true that some of the delay is to be accounted for by the fact that when the cases first came before the District Judge, he attempted to deal with them by a short cut, deciding in favour of the respondent on 21st May 1904, and that time was consumed in the appeal from these orders and the consequent remand. But he gave his second judgment on 14th April 1914, and it has taken till now to bring the matter before their Lordships. Some delays are to be

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accounted for by the fact that in the agnates' suit there were very many plaintiffs, and that all of them except the one plaintiff were made defendants in the other suit; and that from time to time deaths occurred, and that new parties had to be added by way of revivor or of supplement.

But, even so, the delays are discreditable.

Now with regard to the second appeal. It was rightly contended by counsel for the respondent that before any enquiry was made into his client's title, the plaintiff had to prove his own title, and that upon the holding of the District Judge, which he was prepared to support, the plaintiff had in any event no title. So far as this line of defence was indicated, it seemed to their Lordships not unlikely that it would succeed. But as it also seemed to their Lordships that the grounds on which the High Court decided might be sufficient, and that the conclusions arrived at in the first suit as to the impartiblity of the estate and its descent by lineal primogeniture, must also be accepted in this second suit, they proceeded to hear the argument upon the question of adoption.

Now this was attacked in three ways. First of all it was said that Latchamma had never adopted; secondly, that her husband had never given her authority to adopt; and thirdly, that the alleged written authority to adopt, on which reliance was placed, could not be looked at as it had not been registered in British India as required by the Registration Act.

Several of these points turn on questions of fact. Both Courts found that Latchamma had adopted the respondent. Both found that there was no oral authority from her husband, but both found that the written authority, if it could be looked at, was genuine. Then came the questions under the Registration Act, and here

again one of these questions also turned upon fact, and so turning, was again found in favour of the respondent, and upon none of these questions of fact has any reason been shown to their Lordships for not accepting the concurrent findings.

The Indian Registration Act, 1877, provides by section 17 that an authority to adopt not conferred by a will shall be registered, and by section 25 that any document requiring registration which has been executed outside British India, shall be presented for registration within four months after its arrival in British India, and by section 49 that no document required by section 17 to be registered shall be received in evidence unless registered in accordance with the Act.

It was contended for the appellant that Latchamma, who had left Hyderabad after her husband's death, and come to reside at her old home, had brought the document with her into British India, more than four months before she presented it for registration. This issue of fact, if it was open after the decision of the Registrar, was found in favour of the respondent.

The one question that then remained was whether the document which was in fact registered had been duly presented as required by the Act.

The sections which relate to this matter are the following: —

"32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,

"by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

"or by the representative or assign of such person,

"or by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned."

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"40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

"and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration."

41. "A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

"A will or authority to adopt presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied,

(*a*) that the will or authority was executed by the testator or donor, as the case may be;

(*b*) that the testator or donor is dead; and

(*c*) that the person presenting the will or authority is, under section 40, entitled to present the same."

Now the authority to adopt was presented to the Registrar on 20th August, 1892, by Nayani Raghava Reddi, who describes himself as natural father and guardian of the minor. The Registrar examined witnesses and came to the following conclusions:—

"From the depositions of the above-said witnesses, I have satisfied myself with respect to the matters mentioned herein below:—

(1) That this document was executed and given by the person who purports to have executed and given it.

(2) That the executant is dead.

(3) That the person who presented this document has authority according to section 40 of the Registration Act to present the same."

And thereupon he registered the document.

The contention is that the person presenting was, though the Registrar had accepted him, nevertheless not the person who could lawfully present under the terms of the Act. The argument took this shape. First, that section 40 excludes the provisions of section 32 and limits the persons entitled to present for registration an

authority to adopt, to the actual donor if living, and to the donee and the adopted son after the donor's death, and that it will not do to have it presented by the representative of the adopted son.

Their Lordships do not take this view. They agree with the learned Judges in the Court below and on this particular point they would specially refer to the judgment of the second Judge in the High Court, SADASIVA AIYAR, J.

Section 40 is intended for the case of what may be called ambulatory documents, documents which can be revoked at any moment, and which will have no binding effect till the death of the executant, and to that extent they are taken out of section 32. An intended executor, legatee or donee of a power might possibly under section 32 be considered as a person claiming under the instrument. But he is not to be allowed to present a document for registration while it is still capable of revocation. On the other hand, the class of persons who after death may claim to register, is defined, and it may be said, expanded. It is not merely the executor but also the legatee. It is not merely the donee of the power to adopt, but also the person claiming to have been adopted. These are the principals. Then given the principals, section 32 introduces certain agents who can take the place of principals, and one of these agents is the representative of a person claiming under the document. Now the word representative is defined in section 3 as including the guardian of a minor. Here the person presenting describes himself as being the natural father and guardian. It is said that when adoption has once taken place, the adopted child is removed wholly out of his natural family, and that his natural father has no longer a legal relation to him. This may be taken to be the case;

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but what is to happen when a child of tender years, as was the case here, is actually residing with his natural father, and has no appointed guardian. When one remembers that the definition of representative does not make it equal to guardian, but says that it includes guardian, might it not well be said that in these circumstances and in the absence of any legally appointed guardian, the natural father was the representative?

However, it is not necessary to decide this. It appears that as so often happens, the adoption was of a child of the same family, and that if the child be taken as having entered into his adoptive father's family, the natural father was nevertheless the nearest male agnate, and the proper person to be appointed guardian, and the proper person to act as natural guardian in the absence of any judicial appointment. If there were any doubt upon these facts, it might further be observed that, by section 41, the Registrar is made the judge whether the person presenting the authority is entitled to present it, and though objection was raised on behalf of the appellant to the registration on the ground that it was out of time, no similar objection was raised as to the propriety of the person presenting.

If this conclusion be arrived at, it is as unnecessary to enter upon the defence of the Limitation Act as it is upon the question of the plaintiff's title. Neither is it necessary to discuss the important but somewhat abstruse question, whether the respondent being at that time resident in and a subject of the State of the Nizam, can rely upon the unquestioned fact that his status as an adopted child was accepted by the Courts in the Nizam's dominions, as a binding decision on the question of his status precluding all dispute as to the fact and lawfulness of his adoption.

Upon the whole, their Lordships will humbly advise His Majesty that both appeals fail, and should be dismissed with costs.

In 1913, a petition by the respondent was before the Board, applying for special leave to appeal from the orders remanding the suits. The Board did not feel able to advise that special leave to appeal should be granted from interlocutory orders, so their Lordships directed the petition to stand over generally until the proceedings on the merits in the Courts below had terminated, and they intimated that the costs of that application ought to be costs in the suits. As no order has been made in the Courts below as to these costs, it remains for their Lordships to advise that these costs should be included by the respondent in his costs of these appeals, which the appellants will pay. As the petitioner has been successful in these appeals, his petition has no further object and should be dismissed.

Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellants : *Douglas Grant and Dold.*

Solicitors for respondent : *T. L. Wilson and Co.*

A.M.T.